

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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STANLEY E. STILWELL, JR.,

Plaintiff,

v.

CAESARS ENTERTAINMENT
CORPORATION, *et al.*,

Defendants.

Case No. 2:19-cv-01896-KJD-VCF

ORDER

Presently before the Court is Defendant Caesars Entertainment Corporation's Motion to Dismiss (#43). Plaintiff filed a response in opposition (#46) to which Defendant Caesars replied (#47).

I. Background

On March 22, 2021, the Court granted (#40) Defendant Bartender's Union Local 165's initial motion to dismiss because it found that Plaintiff had failed to appropriately plead his claim that the Union failed to adequately represent him. However, the Court granted Plaintiff leave to file an amended complaint to correct the deficiencies in his claim. When Plaintiff filed his First Amended Complaint (#41), in addition to adding allegations to his fair representation claim, he added a claim under the Family Medical Leave Act, 29 CFR 825 et seq. ("FMLA") against Defendant Caesars. Defendant Caesars now moves to dismiss this claim, because Defendant did not first seek permission of the Court to file it.

Plaintiff's initial Complaint (#1) was filed on October 25, 2019. The Union moved to dismiss the complaint on March 10, 2020. The deadline to file a motion to amend the pleadings was June 8, 2020 (#11).

1 II. Analysis

2 Generally speaking, a party may amend their pleadings “as a matter of course” before a
3 responsive pleading has been served. Fed. R. Civ. Pr. 15(a). After that, a party may amend their
4 pleadings “only by leave of the court...[which] leave shall be freely given when justice so
5 requires.” Id. In such instances, the Court would balance the strong policy towards permitting
6 amendment versus “undue delay, bad faith or dilatory motive on the part of the movant, repeated
7 failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing
8 party by virtue of allowance of the amendment, futility of amendment, etc.” See Schlacter-Jones
9 v. General Telephone, 936 F.2d 435, 443 (9th Cir. 1991) (quoting Foman v. Davis, 371 U.S. 178,
10 182 (1962)).

11 However, where the Court has filed a pretrial scheduling order that has established a
12 timetable or deadline for amending the pleadings, the Court will consider proposed amendments
13 under Federal Rule of Civil Procedure 16(b). That rule requires that the schedule for amending
14 pleadings not be modified without a showing of good cause for failure to amend within the time
15 specified in the scheduling order. See Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th
16 Cir. 2000). This standard “primarily considers the diligence of the party seeking the
17 amendment.” See Johnson v. Mammoth Recreations, Inc. 975 F.2d 604, 608 (9th Cir. 1992). A
18 scheduling order (#14) was issued in this case that set June 8, 2020 as the deadline for amending
19 the pleadings. Therefore, the Court will review Plaintiff’s untimely addition of the FMLA claim
20 under Rule 16’s good cause standard, because the amendment was filed well past the deadline set
21 in the discovery scheduling order and without prior authorization of the Court.

22 In fact, Plaintiff agrees that the amendment is untimely and asserts that he intends to seek
23 a stipulation to amend or move for leave to amend pursuant to Rule 15. However, Plaintiff does
24 not explain the failure to file a motion to amend before the expiration date of the amendment
25 deadline in the scheduling order. Further, even though Plaintiff knew the claim existed before the
26 expiration of the deadline, Plaintiff has had twenty months in which to file a motion to amend
27 and has failed to do so. Accordingly, the Court finds that Plaintiff has failed to show good cause
28 for his failure to amend within the allowed time. Additionally, Plaintiff’s failure to file a motion

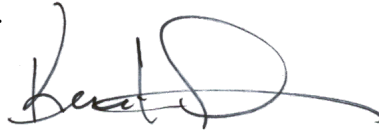
1 to amend following the expiration of the deadline is inexcusable. Therefore, the Court grants
2 Defendant's motion to dismiss Plaintiff's claim arising under the FMLA.

3 III. Conclusion

4 Accordingly, IT IS HEREBY ORDERED that Defendant Caesars Entertainment
5 Corporation's Motion to Dismiss (#43) is **GRANTED**;

6 IT IS FURTHER ORDERED that Plaintiff's fifth cause of action for violation of the
7 FMLA is **DISMISSED**.

8 Dated this 28th day of February, 2022.

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Kent J. Dawson
11 United States District Judge
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